

REMARKS

By an Office Action dated June 25, 2004 in the file of this application, the Examiner rejected any of the claims of this application based on a variety of grounds under 35 U.S.C. §112, first paragraph and made other objections to the application. Based on this submission reconsideration of the merits of this patent application is respectfully requested.

First, in response to the Office Action, the Examiner had requested that sequence identifiers be inserted for each of the sequences shown in FIG 1. That has been done in the Brief Description of Drawing Figures presented above. Separately, enclosed herewith is a new sequence listing and computer readable form of that sequence listing to add the sequence identification numbers to the sequence listing in the application. It is respectfully requested that the paper and computer readable copies of the sequence listing for this application, which are the same, be substituted for those previously filed in this application.

The first ground of rejection in the Office Action was under 35 U.S.C. §112, first paragraph, a failure to comply with written requirement. The applicant understand that the Examiner objected to language in the claims which recited that the sequences were identical in amino acid sequences at residues 95 to 97 and 98 to 109. The Examiner objected to this phrase as new matter.

Although there was a typographical error in this recitation (it should have been amino acids 94 to 96 and 98 to 109), it is submitted that this limitation was supported by the specification as filed. Note Figure 1 in which these residues are found (and highlighted in black background) in all of the analogous sequences which could be found in the literature for plastid division genes. However, in order to avoid dispute on this issue, and in view of the fact that the Examiner appears to find allowable subject matter in the other language of the claim, this language has been removed from each of the claims at issue in this application.

A separate rejection under 35 U.S.C. §112, first paragraph, was made against the specification. In that rejection (paragraph 6 of the Office Action), the Examiner stated that the application was enabling “for nucleic acids encoding a MinD protein with 92% identity to SEQ ID NO:2” and plants and methods encompassing that claim scope. Accordingly, all the claims have been amended to recite that claim scope and to delete the language relating to amino acids 95 to 109 of SEQ ID NO:2. It is believed that this amendment will overcome this ground of rejection as applied by the Examiner.

Also in the Office Action was another rejection under 35 U.S.C. §112, first paragraph, for subject matter not contained within the application. Again the Examiner pointed to the language referring to amino acids 95 to 109. Again that offending language has been

removed to obviate this ground of rejection. It is believed that this rejection is now overcome.

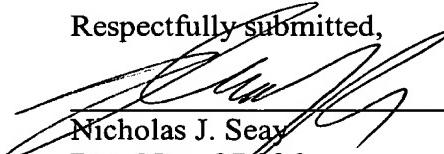
Claims 5 and 15 to 19 were rejected under 35 U.S.C. §112, second paragraph, for indefiniteness. In both instances the indefiniteness has been cured by amendments made to the claims above.

The Examiner did indicate that Claims 3 and 8 were allowed. However, the applicant was unable to find any reference in the Office Action to any rejection to Claim 30. Since Claim 30 was and is specific to the amino acid sequence of SEQ ID NO:2, it was thought that that claim should be allowable, but no discussion of that claim can be found by the applicant in the Office Action.

It is acknowledged that the Examiner has stated that the claims are free of prior art and the issue is appropriate in breadth and support for claim coverage. As understood by the applicant, the claims above should put the claims of this application in condition for allowance.

Wherefore reconsideration of the merits of this patent application is respectfully requested once again. It is believed all the grounds of rejection applied by the Examiner have been addressed above. A separate petition for extension of time is submitted herewith so that this response will be considered as timely filed.

Respectfully submitted,


Nicholas J. Seay
Reg. No.: 27,386
Attorney for Applicant
QUARLES & BRADY LLP
P.O. Box 2113
Madison, WI 53701

TEL 608/251-5000
FAX 608/251-9166